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105TH CONGRESS
2D SESSION

H. R. 4321

[Report No. 105-]

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1998

Mr. LEACH (for himself, Mr. LAZIO of New York, Mr. CASTLE, Mr. LaFALCE, Mr. HINCHEY, and Mr. VENTO) introduced the following bill; which was referred to the Committee on Banking and Financial Services

AUGUST , 1998

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 23, 1998]

A BILL

To protect consumers and financial institutions by preventing personal financial information from being obtained from financial institutions under false pretenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Financial Information*
3 *Privacy Act of 1998”.*

4 **SEC. 2. FINANCIAL INFORMATION PRIVACY.**

5 *(a) IN GENERAL.—The Consumer Credit Protection*
6 *Act (15 U.S.C. 1601 et seq.) is amended by adding at the*
7 *end the following:*

8 **“TITLE X—FINANCIAL INFORMATION PRIVACY**
9 **PROTECTION**

“Sec.

“1001. Short title.

“1002. Definitions.

“1003. Privacy protection for customer information of financial institutions.

“1004. Administrative enforcement.

“1005. Civil liability.

“1006. Criminal penalty.

“1007. Relation to State laws.

“1008. Agency guidance.

10 **“§ 1001. Short title**

11 *“This title may be cited as the ‘Financial Information*
12 *Privacy Act’.*

13 **“§ 1002. Definitions**

14 *“For purposes of this title, the following definitions*
15 *shall apply:*

16 *“(1) CUSTOMER.—The term ‘customer’ means,*
17 *with respect to a financial institution, any person (or*
18 *authorized representative of a person) to whom the fi-*
19 *nancial institution provides a product or service, in-*
20 *cluding that of acting as a fiduciary.*

1 “(2) *CUSTOMER INFORMATION OF A FINANCIAL*
2 *INSTITUTION.—The term ‘customer information of a*
3 *financial institution’ means any information main-*
4 *tained by a financial institution which is derived*
5 *from the relationship between the financial institution*
6 *and a customer of the financial institution and is*
7 *identified with the customer.*

8 “(3) *DOCUMENT.—The term ‘document’ means*
9 *any information in any form.*

10 “(4) *FINANCIAL INSTITUTION.—*

11 “(A) *IN GENERAL.—The term ‘financial in-*
12 *stitution’ means any institution engaged in the*
13 *business of providing financial services to cus-*
14 *tomers who maintain a credit, deposit, trust, or*
15 *other financial account or relationship with the*
16 *institution.*

17 “(B) *CERTAIN FINANCIAL INSTITUTIONS*
18 *SPECIFICALLY INCLUDED.—The term ‘financial*
19 *institution’ includes any depository institution*
20 *(as defined in section 19(b)(1)(A) of the Federal*
21 *Reserve Act), any loan or finance company, any*
22 *credit card issuer or operator of a credit card*
23 *system, and any consumer reporting agency that*
24 *compiles and maintains files on consumers on a*
25 *nationwide basis (as defined in section 603(p)).*

1 “(C) *FURTHER DEFINITION BY REGULA-*
2 *TION.—The Board of Governors of the Federal*
3 *Reserve System may prescribe regulations fur-*
4 *ther defining the term ‘financial institution’, in*
5 *accordance with subparagraph (A), for purposes*
6 *of this title.*

7 **“§ 1003. Privacy protection for customer information**
8 ***of financial institutions***

9 “(a) *PROHIBITION ON OBTAINING CUSTOMER INFOR-*
10 *MATION BY FALSE PRETENSES.—It shall be a violation of*
11 *this title for any person to obtain or attempt to obtain, or*
12 *cause to be disclosed or attempt to cause to be disclosed to*
13 *any person, customer information of a financial institution*
14 *relating to another person—*

15 “(1) *by knowingly making a false, fictitious, or*
16 *fraudulent statement or representation to an officer,*
17 *employee, or agent of a financial institution with the*
18 *intent to deceive the officer, employee, or agent into*
19 *relying on that statement or representation for pur-*
20 *poses of releasing the customer information;*

21 “(2) *by knowingly making a false, fictitious, or*
22 *fraudulent statement or representation to a customer*
23 *of a financial institution with the intent to deceive*
24 *the customer into relying on that statement or rep-*
25 *resentation for purposes of releasing the customer in-*

1 *formation or authorizing the release of such informa-*
2 *tion; or*

3 *“(3) by knowingly providing any document to*
4 *an officer, employee, or agent of a financial institu-*
5 *tion, knowing that the document is forged, counterfeit,*
6 *lost, or stolen, was fraudulently obtained, or contains*
7 *a false, fictitious, or fraudulent statement or represen-*
8 *tation, if the document is provided with the intent to*
9 *deceive the officer, employee, or agent into relying on*
10 *that document for purposes of releasing the customer*
11 *information.*

12 *“(b) PROHIBITION ON SOLICITATION OF A PERSON TO*
13 *OBTAIN CUSTOMER INFORMATION FROM FINANCIAL INSTI-*
14 *TUTION UNDER FALSE PRETENSES.—It shall be a violation*
15 *of this title to request a person to obtain customer informa-*
16 *tion of a financial institution, knowing or consciously*
17 *avoiding knowing that the person will obtain, or attempt*
18 *to obtain, the information from the institution in any man-*
19 *ner described in subsection (a).*

20 *“(c) NONAPPLICABILITY TO LAW ENFORCEMENT*
21 *AGENCIES.—No provision of this section shall be construed*
22 *so as to prevent any action by a law enforcement agency,*
23 *or any officer, employee, or agent of such agency, to obtain*
24 *customer information of a financial institution in connec-*

1 *tion with the performance of the official duties of the agen-*
2 *cy.*

3 “(d) *NONAPPLICABILITY TO FINANCIAL INSTITUTIONS*
4 *IN CERTAIN CASES.*—No provision of this section shall be
5 construed so as to prevent any financial institution, or any
6 officer, employee, or agent of a financial institution, from
7 obtaining customer information of such financial institu-
8 tion in the course of—

9 “(1) *testing the security procedures or systems of*
10 *such institution for maintaining the confidentiality of*
11 *customer information;*

12 “(2) *investigating allegations of misconduct or*
13 *negligence on the part of any officer, employee, or*
14 *agent of the financial institution; or*

15 “(3) *recovering customer information of the fi-*
16 *nancial institution which was obtained or received by*
17 *another person in any manner described in subsection*
18 *(a) or (b).*

19 “(e) *NONAPPLICABILITY TO CERTAIN TYPES OF CUS-*
20 *OMER INFORMATION OF FINANCIAL INSTITUTIONS.*—No
21 provision of this section shall be construed so as to prevent
22 any person from obtaining customer information of a fi-
23 nancial institution that otherwise is available as a public
24 record filed pursuant to the securities laws (as defined in
25 section 3(a)(47) of the Securities Exchange Act of 1934).

1 **“§ 1004. Administrative enforcement**

2 “(a) *ENFORCEMENT BY FEDERAL TRADE COMMIS-*
3 *SION.—Except as provided in subsection (b), compliance*
4 *with this title shall be enforced by the Federal Trade Com-*
5 *mission in the same manner and with the same power and*
6 *authority as the Commission has under the title VIII, the*
7 *Fair Debt Collection Practices Act, to enforce compliance*
8 *with such title.*

9 “(b) *ENFORCEMENT BY OTHER AGENCIES IN CERTAIN*
10 *CASES.—*

11 “(1) *IN GENERAL.—Compliance with this title*
12 *shall be enforced under—*

13 “(A) *section 8 of the Federal Deposit Insur-*
14 *ance Act, in the case of—*

15 “(i) *national banks, and Federal*
16 *branches and Federal agencies of foreign*
17 *banks, by the Office of the Comptroller of*
18 *the Currency;*

19 “(ii) *member banks of the Federal Re-*
20 *serve System (other than national banks),*
21 *branches and agencies of foreign banks*
22 *(other than Federal branches, Federal agen-*
23 *cies, and insured State branches of foreign*
24 *banks), commercial lending companies*
25 *owned or controlled by foreign banks, and*
26 *organizations operating under section 25 or*

1 *25A of the Federal Reserve Act, by the*
2 *Board;*

3 *“(iii) banks insured by the Federal De-*
4 *posit Insurance Corporation (other than*
5 *members of the Federal Reserve System and*
6 *national nonmember banks) and insured*
7 *State branches of foreign banks, by the*
8 *Board of Directors of the Federal Deposit*
9 *Insurance Corporation; and*

10 *“(iv) savings associations the deposits*
11 *of which are insured by the Federal Deposit*
12 *Insurance Corporation, by the Director of*
13 *the Office of Thrift Supervision; and*

14 *“(B) the Federal Credit Union Act, by the*
15 *Administrator of the National Credit Union Ad-*
16 *ministration with respect to any Federal credit*
17 *union.*

18 *“(2) VIOLATIONS OF THIS TITLE TREATED AS*
19 *VIOLATIONS OF OTHER LAWS.—For the purpose of the*
20 *exercise by any agency referred to in paragraph (1)*
21 *of its powers under any Act referred to in that para-*
22 *graph, a violation of this title shall be deemed to be*
23 *a violation of a requirement imposed under that Act.*
24 *In addition to its powers under any provision of law*
25 *specifically referred to in paragraph (1), each of the*

1 *agencies referred to in that paragraph may exercise,*
2 *for the purpose of enforcing compliance with this title,*
3 *any other authority conferred on such agency by law.*

4 *“(c) STATE ACTION FOR VIOLATIONS.—*

5 *“(1) AUTHORITY OF STATES.—In addition to*
6 *such other remedies as are provided under State law,*
7 *if the chief law enforcement officer of a State, or an*
8 *official or agency designated by a State, has reason*
9 *to believe that any person has violated or is violating*
10 *this title, the State—*

11 *“(A) may bring an action to enjoin such*
12 *violation in any appropriate United States dis-*
13 *trict court or in any other court of competent ju-*
14 *risdiction;*

15 *“(B) may bring an action on behalf of the*
16 *residents of the State to recover damages of not*
17 *more than \$1,000 for each violation; and*

18 *“(C) in the case of any successful action*
19 *under subparagraph (A) or (B), shall be award-*
20 *ed the costs of the action and reasonable attorney*
21 *fees as determined by the court.*

22 *“(2) RIGHTS OF FEDERAL REGULATORS.—*

23 *“(A) PRIOR NOTICE.—The State shall serve*
24 *prior written notice of any action under para-*
25 *graph (1) upon the Federal Trade Commission*

1 *and, in the case of an action which involves a*
2 *financial institution described in section*
3 *1004(b)(1), the agency referred to in such section*
4 *with respect to such institution and provide the*
5 *Federal Trade Commission and any such agency*
6 *with a copy of its complaint, except in any case*
7 *in which such prior notice is not feasible, in*
8 *which case the State shall serve such notice im-*
9 *mediately upon instituting such action.*

10 “(B) *RIGHT TO INTERVENE.*—*The Federal*
11 *Trade Commission or an agency described in*
12 *subsection (b) shall have the right—*

13 “(i) *to intervene in an action under*
14 *paragraph (1);*

15 “(ii) *upon so intervening, to be heard*
16 *on all matters arising therein;*

17 “(iii) *to remove the action to the ap-*
18 *propriate United States district court; and*

19 “(iv) *to file petitions for appeal.*

20 “(3) *INVESTIGATORY POWERS.*—*For purposes of*
21 *bringing any action under this subsection, no provi-*
22 *sion of this subsection shall be construed as prevent-*
23 *ing the chief law enforcement officer, or an official or*
24 *agency designated by a State, from exercising the*
25 *powers conferred on the chief law enforcement officer*

1 *or such official by the laws of such State to conduct*
2 *investigations or to administer oaths or affirmations*
3 *or to compel the attendance of witnesses or the pro-*
4 *duction of documentary and other evidence.*

5 *“(4) LIMITATION ON STATE ACTION WHILE FED-*
6 *ERAL ACTION PENDING.—If the Federal Trade Com-*
7 *mission or any agency described in subsection (b) has*
8 *instituted a civil action for a violation of this title,*
9 *no State may, during the pendency of such action,*
10 *bring an action under this section against any de-*
11 *fendant named in the complaint of the Federal Trade*
12 *Commission or such agency for any violation of this*
13 *title that is alleged in that complaint.*

14 ***“§ 1005. Civil liability***

15 *“Any person, other than a financial institution, who*
16 *fails to comply with any provision of this title with respect*
17 *to any financial institution or any customer information*
18 *of a financial institution shall be liable to such financial*
19 *institution or the customer to whom such information re-*
20 *lates in an amount equal to the sum of the amounts deter-*
21 *mined under each of the following paragraphs:*

22 *“(1) ACTUAL DAMAGES.—The greater of—*

23 *“(A) the amount of any actual damage sus-*
24 *tained by the financial institution or customer*
25 *as a result of such failure; or*

1 “(B) any amount received by the person
2 who failed to comply with this title, including
3 an amount equal to the value of any nonmone-
4 tary consideration, as a result of the action
5 which constitutes such failure.

6 “(2) *ADDITIONAL DAMAGES.*—Such additional
7 amount as the court may allow.

8 “(3) *ATTORNEYS’ FEES.*—In the case of any suc-
9 cessful action to enforce any liability under para-
10 graph (1) or (2), the costs of the action, together with
11 reasonable attorneys’ fees.

12 **“§ 1006. Criminal penalty**

13 “(a) *IN GENERAL.*—Whoever violates, or attempts to
14 violate, section 1003 shall be fined in accordance with title
15 18, United States Code, or imprisoned for not more than
16 5 years, or both.

17 “(b) *ENHANCED PENALTY FOR AGGRAVATED CASES.*—
18 Whoever violates, or attempts to violate, section 1003 while
19 violating another law of the United States or as part of
20 a pattern of any illegal activity involving more than
21 \$100,000 in a 12-month period shall be fined twice the
22 amount provided in subsection (b)(3) or (c)(3) (as the case
23 may be) of section 3571 of title 18, United States Code,
24 imprisoned for not more than 10 years, or both.

1 **“§ 1007. Relation to State laws**

2 “(a) *IN GENERAL.*—*This title shall not be construed*
3 *as superseding, altering, or affecting the statutes, regula-*
4 *tions, orders, or interpretations in effect in any State, ex-*
5 *cept to the extent that such statutes, regulations, orders, or*
6 *interpretations are inconsistent with the provisions of this*
7 *title, and then only to the extent of the inconsistency.*

8 “(b) *GREATER PROTECTION UNDER STATE LAW.*—*For*
9 *purposes of this section, a State statute, regulation, order,*
10 *or interpretation is not inconsistent with the provisions of*
11 *this title if the protection such statute, regulation, order,*
12 *or interpretation affords any person is greater than the pro-*
13 *tection provided under this title.*

14 **“§ 1008. Agency guidance**

15 *“In furtherance of the objectives of this title, each Fed-*
16 *eral banking agency (as defined in section 3(z) of the Fed-*
17 *eral Deposit Insurance Act) shall issue advisories to deposi-*
18 *tory institutions under the jurisdiction of the agency, in*
19 *order to assist such depository institutions in deterring and*
20 *detecting activities proscribed under section 1003.”.*

21 “(b) *REPORT TO THE CONGRESS.*—*Before the end of the*
22 *18-month period beginning on the date of the enactment of*
23 *this Act, the Comptroller General, in consultation with the*
24 *Federal Trade Commission, Federal banking agencies, and*
25 *appropriate Federal law enforcement agencies, shall submit*
26 *to the Congress a report on the following:*

1 (1) *The efficacy and adequacy of the remedies*
2 *provided in the amendments made by subsection (a)*
3 *in addressing attempts to obtain financial informa-*
4 *tion by fraudulent means or by false pretenses.*

5 (2) *Any recommendations for additional legisla-*
6 *tive or regulatory action to address threats to the pri-*
7 *vacy of financial information created by attempts to*
8 *obtain information by fraudulent means or false pre-*
9 *tenses.*